

RENDERED: SEPTEMBER 7, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001380-ME

J.W.

APPELLANT

v. APPEAL FROM CARROLL CIRCUIT COURT
HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 16-AD-00002

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY;
AND A.L.E., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, DIXON, AND MAZE, JUDGES.

MAZE, JUDGE: J.W. (Father) appeals from an order of the Carroll Circuit Court terminating his parental rights to A.L.E. (child), who was born in October of 2014. The child was removed from his Mother shortly after birth due to Mother's issues

with mental illness and placement of the child with an inappropriate caregiver. The child has remained in foster care since that time.

On March 1, 2016, the Cabinet filed a petition for involuntary termination of Mother's and Father's parental rights. Mother consented to voluntary termination of her parental rights. Following service of process via Warning Order Attorney, the court appointed counsel for Father. The Cabinet negotiated a case plan with Father, but he failed to complete any items of that plan except for paternity testing after more than a year.

The termination matter came before the circuit court for a hearing on May 23, 2017. Subsequently, on July 24, 2017, the trial court entered findings of fact and conclusions of law that it was in the best interests of the child for the parental rights to be terminated. Consequently, the court entered an order terminating Father's parental rights.

On appeal, Father's counsel filed a brief stating that he was unable to find any ground of error by the trial court which would entitle Father to relief. *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Counsel asks this court to review the record to determine whether the trial court committed reversible error in this matter. In accordance with the procedures set forth in *A.C. v. Cabinet for Health & Family Services*, 362 S.W.3d 361 (Ky. App.

2012), this Court shall grant the motion by appointed counsel to withdraw and this appeal shall proceed *pro se*.

To support an involuntary termination of parental rights, the circuit court must find by clear and convincing evidence the elements set out in KRS¹ 625.090. On review of an order terminating parental rights, we ask whether the circuit court's findings were clearly erroneous. *Cabinet for Families & Children v. G.C.W.*, 139 S.W.3d 172, 178 (Ky. App. 2004). The circuit court's factual findings will not be disturbed unless there exists no substantial evidence in the record to support them. *V.S. v. Commonwealth, Cabinet for Human Res.*, 706 S.W.2d 420, 424 (Ky. App. 1986).

First, the circuit court must find that the child is “an abused or neglected child.” KRS 625.090(1)(a)(2). Abandonment is included within that definition as set out in KRS 600.020(1). The record clearly establishes that Father abandoned or failed to provide essential support for the child since birth.

Second, “the circuit court must find the existence of one or more of ten specific grounds set forth in KRS 625.090(2).” *M.E.C. v. Commonwealth, Cabinet for Health & Family Servs.*, 254 S.W.3d 846, 851 (Ky. App. 2008). The circuit court found that: (1) Father abandoned the child for a period of not less than ninety days, KRS 625.090(2)(a); (2) Father failed or refused to provide or has been

¹ Kentucky Revised Statutes.

substantially unable to provide essential parental care and protection for the child and there is no reasonable expectation of improvement, KRS 625.090(2)(e); (3) Father, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement, KRS 625.090(2)(g); and (4) the child has been in foster care for fifteen of the most recent twenty-two months preceding the filing of the petition to terminate parental rights, KRS 625.090(2)(j). Father does not dispute any of these findings.

Finally, the circuit court must find termination of parental rights would be in the child's best interests, after considering the factors set forth in KRS 625.090(3)(a)-(f). The Cabinet presented evidence of its efforts to contact and work with Father starting in early 2015. Father had no contact with the child during any of this period and he has never paid child support. The Cabinet also presented evidence that the child is doing well in foster care and that the foster family is hopeful to adopt the child if given the opportunity to do so.

In his brief, Father's counsel notes Father's claim that he was unaware that the child was in foster care until he was notified by Warning Order Attorney on or about March 10, 2016. Father also states that he had difficulty completing the DNA test done because he was out-of-state and needed more time. As

discussed above, the Cabinet presented evidence of its efforts to contact Father prior to the report of the Warning Order Attorney. Moreover, Father did not offer any specific explanation for his failure to complete the DNA testing for more than a year after he entered his appearance in this case.

Under the circumstances, the trial court's factual findings are sufficient as required by KRS 625.090. Furthermore, those findings are amply supported by clear and convincing evidence. Based on these findings, the trial court did not clearly err in finding that termination of Father's parental rights would be in the best interest of the child. We find substantial evidence in the record to support the trial court's finding that termination would be in the child's best interests.

Accordingly, we affirm the order of the Carroll Circuit Court terminating Father's parental rights.

ALL CONCUR.

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